

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 663 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURA MEGHA SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner

MR ST MEHTA APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 10/08/98

ORAL JUDGEMENT

Rule. Mr. S.T. Mehta, learned A.P.P. waives service of rule.

By filing this Special Criminal Application No. 663 of 1998, the petitioner has, inter alia, averred that his son is undergoing sentence for life at Central Prison, Sabarmati, Ahmedabad since 1995. Criminal Appeal No. 583 of 1997 which has been preferred before this Court is

admitted and is pending for final hearing. It is averred that the petitioner's son had filed one Criminal Miscellaneous Application for releasing him on temporary bail which was heard and decided by this Court on 1.6.1998. By the said order this Court released the petitioner's son on temporary bail for 15 days on his furnishing bond of Rs.5,000/- or depositing Rs.5,000/with the concerned jail authorities. Thereafter extension for further time was also permitted on production of certificate of the Civil Surgeon to the effect that the post surgical treatment is necessary. The petitioner deposited a sum of Rs.5,000 in cash with jail authorities and thereafter his son was released on temporary bail for 15 days. As per the order of this Court the petitioner's son was supposed to surrender himself before the jail authorities on 18.6.1998 at 1.30 P.M. It is further averred that son of the petitioner has surrendered before the jail authorities on 18.6.1998 at 2.15 P.M. instead of 1.30 P.M. It is further say of the petitioner that as his son could not reach the jail authorities at 1.30 P.M. the jail authorities have withheld/confiscated the amount of Rs.5,000/- and refused to pay it back to the petitioner as his son has committed breach of the condition on which he was released on temporary bail. It is further say of the petitioner that this action on the part of the jail authorities is arbitrary, unjust and violative of fundamental rights and, therefore, he has approached this Court as he has no alternative remedy with a prayer to direct the jail authorities to refund the said amount to his son.

I have heard learned advocate Mrs. Sharma for the petitioner and Mr. S.T. Mehta, A.P.P. for the respondents.

After having dispassionately heard both the parties and considering the facts and circumstances of the case and more particularly the communication by Deputy Superintendent, Central Jail, Ahmedabad, it appears that only because of not surrendering himself before the concerned jail authorities an amount of Rs.5,000 which has been deposited with the jail authorities has been withheld/forfeited by the jail authorities. As per the order of this Court, petitioner's son was supposed to surrender at 1.30 P.M. on 18.6.1998. Instead of that he surrendered only at 2.15 P.M., that is, 45 minutes late and the aforesaid lapse on the part of the convict/prisoner is sufficiently explained in the memo of petition. According to me, this is not a legitimate ground to withhold the amount of Rs.5,000/- by the jail authorities.

In view of this, when the convict/prisoner for whose release the amount of Rs.5,000/- was deposited has already surrendered himself before the jail authorities, though late by 45 minutes for which sufficient grounds are given in the memo of petition, on this sole ground the jail authorities cannot forfeit/withhold the said amount of Rs.5,000/- deposited with them. Thus, the petitioner is entitled to get back the said amount from the jail authorities.

Resultantly, the petition succeeds. The respondents are directed to return Rs.5,000/- to the petitioner which he has deposited for temporary release of his son on bail after properly verifying the receipts issued in that regard. Communication sent by Deputy Superintendent, Central Jail, Ahmedabad is ordered to be taken on record.

Rule is made absolute to the aforesaid extent.
